

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK**

MICROSOFT CORPORATION,
a Washington corporation,

Plaintiff,

v.

KEVIN CHALKER, an individual, and d/b/a KC
COMPUTERS,

Defendants.

COMPLAINT

Civil Action No.

This is an action by Microsoft Corporation (“Microsoft”) to recover damages arising from infringement of Microsoft’s copyrights and trademarks in its software programs by Kevin Chalker, an individual and doing business as KC Computers (collectively, “Defendants”) and to enjoin Defendants’ future infringement. Defendants distributed infringing Microsoft software, despite the fact that Microsoft requested that they cease and desist from such unlawful conduct. Defendants have infringed Microsoft’s copyrights and trademarks, violated the Lanham Act by falsely designating the origin of software, and engaged in unfair competition. Microsoft seeks damages, an accounting, the imposition of a constructive trust upon Defendants’ illegal profits, and injunctive relief.

THE PARTIES

1. Microsoft is a Washington corporation with its principal place of business located at One Microsoft Way, Redmond, Washington. Microsoft develops, markets, distributes and licenses computer software.

2. Defendant Kevin Chalker is an individual who does business as KC Computers in Penfield, New York and on the Internet. KC Computers is engaged in the business of advertising, marketing, installing, and distributing computer hardware and software, including purported Microsoft software.

3. Upon information and belief, defendant Kevin Chalker is an individual residing in this District. Kevin Chalker owns, operates, or otherwise controls KC Computers. Kevin Chalker transacts substantial business in this District. Upon information and belief, Kevin Chalker (a) personally participated in and/or had the right and ability to direct and control the wrongful conduct alleged in this Complaint, and (b) derived direct financial benefit from that wrongful conduct.

JURISDICTION

4. This Court has subject matter jurisdiction over Microsoft's claims for trademark infringement, copyright infringement and related claims pursuant to 15 U.S.C. § 1121, 17 U.S.C. § 501, 28 U.S.C. §§ 1331 and 1338(a).

5. This Court has supplemental jurisdiction over Microsoft's claims arising under the laws of the State of New York pursuant to 28 U.S.C. § 1367(a) because these claims are so related to Microsoft's claims under federal law that they form part of the same case or controversy and derive from a common nucleus of operative fact.

VENUE

6. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b) and § 1400(a) because (a) the acts of infringement and other wrongful conduct alleged occurred in the Western District of New York; (b) the Defendants may be found in the Western District of New York; and (c) Defendants have a sufficient connection with the Western District of New York to make venue proper in this district, all as alleged in this Complaint.

FACTS COMMON TO ALL CLAIMS

7. Microsoft develops, advertises, markets, distributes, and licenses a number of computer software programs. Microsoft's software programs are recorded on magnetic diskettes

and/or CD-ROMs, and they are packaged and distributed together with associated proprietary materials such as user's guides, user's manuals, end user license agreements, certificates of authenticity, and other related components.

8. Microsoft Windows XP Pro: Microsoft has developed, advertises, markets, distributes, and licenses a software package known as Microsoft Windows XP Professional ("Windows XP Pro"). Windows XP Pro is an operating system for desktop and laptop systems. It performs a number of computer-related operations including, but not limited to, providing support for various applications and allowing remote access to data and applications stored on Windows XP Pro desktops from network connections. Microsoft holds a valid copyright in Windows XP Pro (including user's reference manuals, user's guides, and screen displays) that was duly and properly registered with the United States Copyright Office. A true and correct copy of the Registration Certificate for Microsoft Windows XP Pro, bearing the number TX 5-407-055, is attached hereto as Exhibit 1 and is incorporated by reference.

9. Microsoft has also duly and properly registered a number of trademarks and a service mark in the United States Patent and Trademark Office on the Principal Register, including, but not limited to:

- A. "MICROSOFT," Trademark and Service Mark Registration No. 1,200,236, for computer programs and computer programming services;
- B. "MICROSOFT," Trademark Registration No. 1,256,083, for computer hardware and software manuals, newsletters, and computer documentation;
- C. "WINDOWS," Trademark Registration No. 1,872,264 for computer programs and manuals sold as a unit; and
- D. COLORED FLAG DESIGN, Trademark Registration No. 2,744,843, for computer software and manuals sold as a unit therewith;

True and correct copies of the Trademark Registrations for A through D above are attached hereto as Exhibits 2 through 5, respectively, and are incorporated herein by reference.

Defendants' Infringement

10. Defendants are engaged in the advertising, marketing, installation and distribution of computer software, including programs covered by Microsoft's registered copyrights and bearing Microsoft's registered trademarks or imitations thereof.

11. On or about June 6, 2005, Defendants distributed to an investigator a computer system with an unauthorized copy of Microsoft Windows XP Pro software installed. Defendants also distributed to an investigator purported Windows XP Pro software and/or related components that were analyzed and determined to be counterfeit.

12. By means including letters dated July 29, 2005, Microsoft notified Defendants that they were distributing counterfeit Microsoft software components and infringing copies of Microsoft software, installed on computer hard drives, and that such conduct constitutes an infringement of Microsoft's copyrights and trademarks. Microsoft further demanded that Defendants cease and desist from their infringing conduct.

13. Nevertheless, on or about October 4, 2005, Defendants distributed to an investigator computer systems with unauthorized copies of Microsoft Windows XP Pro software installed.

14. On information and belief, these are not isolated incidents. Rather, Defendants have been and continue to be involved in advertising, marketing, installing and/or distributing infringing copies of Microsoft's software to unidentified persons or entities. On information and belief, Defendants' distributions of purported Microsoft software are the result of Defendants' advertising and marketing the availability of such materials.

15. On information and belief, Defendants' wrongful conduct includes the advertising, marketing, installing, and/or distribution of "infringing materials," specifically reproductions, copies, or colorable imitations of the Microsoft copyrighted software and/or the Microsoft trademarks, logos, and service mark described in this Complaint.

16. On information and belief, Defendants have committed and are continuing to commit acts of copyright and trademark infringement against Microsoft. On information and

belief, at a minimum, Defendants were willfully blind and acted in reckless disregard of Microsoft's registered copyrights and marks.

17. On information and belief, by their advertising activities and unauthorized use of Microsoft's marks to describe the items that they are distributing, Defendants have misappropriated Microsoft's advertising ideas and style of doing business and have infringed Microsoft's copyrights, titles, and slogans.

18. On information and belief, the injuries and damages that Microsoft has sustained have been directly and proximately caused by Defendants' wrongful misappropriation of Microsoft's advertising ideas and style of doing business and infringement of Microsoft's copyrights, titles, and slogans.

First Claim

[Copyright Infringement -- 17 U.S.C. § 501, et seq.]

Against Defendants

19. Microsoft realleges, and incorporates by this reference, each and every allegation set forth in paragraphs 1 through 18, inclusive.

20. Microsoft is the sole owner of Microsoft Windows XP Pro, and the corresponding copyright and Certificate of Registration.

21. Defendants have infringed the copyrights in Microsoft's software, including but not limited to Microsoft Windows XP Pro, by distributing infringing materials in the United States of America without approval or authorization from Microsoft.

22. At a minimum, Defendants acted with willful blindness to and in reckless disregard of Microsoft's registered copyrights.

23. As a result of their wrongful conduct, Defendants are liable to Microsoft for copyright infringement. 17 U.S.C. § 501. Microsoft has suffered damages. Microsoft is entitled to recover damages, which include any and all profits Defendants have made as a result of their wrongful conduct. 17 U.S.C. § 504. Alternatively, Microsoft is entitled to statutory damages under 17 U.S.C. § 504(c).

24. In addition, because Defendants' infringement has been willful within the meaning of the Copyright Act, the award of statutory damages should be enhanced in accordance with 17 U.S.C. § 504(c)(2).

25. Microsoft is also entitled to injunctive relief pursuant to 17 U.S.C. § 502 and to an order impounding any and all infringing materials pursuant to 17 U.S.C. § 503. Microsoft has no adequate remedy at law for Defendants' wrongful conduct because, among other things, (a) Microsoft's copyrights are unique and valuable property which have no readily determinable market value, (b) Defendants' infringement harms Microsoft such that Microsoft could not be made whole by any monetary award, and (c) Defendants' wrongful conduct, and the resulting damage to Microsoft, is continuing.

26. Microsoft is also entitled to recover its attorneys' fees and costs of suit. 17 U.S.C. § 505.

Second Claim

[Federal Trademark Infringement – 15 U.S.C. § 1114]

Against Defendants

27. Microsoft realleges, and incorporates by this reference, each and every allegation set forth in paragraphs 1 through 26, inclusive.

28. Defendants' activities constitute infringement of Microsoft's federally registered trademarks and service mark in violation of the Lanham Trademark Act, including but not limited to 15 U.S.C. § 1114(1).

29. Because Microsoft advertises, markets, distributes, and licenses its software under the trademarks and service mark described in this Complaint, these trademarks and service mark are the means by which Microsoft's software is distinguished from the software or products of others in the same field or related fields.

30. Because of Microsoft's long, continuous, and exclusive use of these trademarks and service mark, they have come to mean, and are understood by customers, end users, and the public to signify, software or services of Microsoft.

31. The infringing materials that Defendants have and are continuing to use, offer, advertise, market, install, or distribute are likely to cause confusion, mistake, or deception as to their source, origin, or authenticity.

32. Further, Defendants' activities are likely to lead the public to conclude, incorrectly, that the infringing materials that Defendants are advertising, marketing, installing, or distributing originate with or are authorized by Microsoft, to the damage and harm of Microsoft, its licensees, and the public.

33. Upon information and belief, Defendants used, offered, advertised, marketed, installed or distributed infringing material with the purposes of misleading, deceiving, or confusing customers and the public as to the origin and authenticity of the infringing materials and of trading upon Microsoft's goodwill and business reputation.

34. At a minimum, Defendants acted with willful blindness to and in reckless disregard of Microsoft's registered marks.

35. As a result of their wrongful conduct, Defendants are liable to Microsoft for trademark infringement. 15 U.S.C. § 1114(1). Microsoft has suffered, and will continue to suffer, substantial losses. Microsoft is entitled to recover damages, which include any and all profits Defendants have made as a result of their wrongful conduct. 15 U.S.C. § 1117(a).

36. In addition, because Defendants' infringement of Microsoft's trademarks and service mark was willful within the meaning of the Lanham Act, the award of actual damages and profits should be trebled pursuant to 15 U.S.C. § 1117(b). In the alternative, Microsoft is entitled to statutory damages for each counterfeit mark. 15 U.S.C. § 1117(c).

37. Microsoft is also entitled to injunctive relief pursuant to 15 U.S.C. § 1116(a). Microsoft has no adequate remedy at law for Defendants' wrongful conduct because, among other things, (a) Microsoft's trademarks and service mark are unique and valuable property which have no readily determinable market value, (b) Defendants' infringement constitutes harm to Microsoft such that Microsoft could not be made whole by any monetary award, (c) if Defendants' wrongful conduct is allowed to continue, the public is likely to become further

confused, mistaken, or deceived as to the source, origin or authenticity of the infringing materials, and (d) Defendants' wrongful conduct, and the resulting damage to Microsoft, is continuing.

38. Microsoft is also entitled to recover its attorneys' fees and costs of suit. 15 U.S.C. § 1117.

Third Claim

**[False Designation Of Origin, False Description And
Representation Of Microsoft Packaging--15 U.S.C. § 1125 et seq.]
Against Defendants**

39. Microsoft realleges, and incorporates by this reference, each and every allegation set forth in paragraphs 1 through 38, inclusive.

40. Because Microsoft advertises, markets, distributes, and licenses its software under the trademarks and service mark described in this Complaint, these trademarks and service mark are the means by which Microsoft's software is distinguished from the software or products of others in the same field or related fields.

41. Because of Microsoft's long, continuous, and exclusive use of these trademarks and service mark, they have come to mean, and are understood by customers, end users, and the public to signify, software or services of Microsoft.

42. Microsoft has also designed distinctive and aesthetically pleasing displays, logos, icons, graphic images, and packaging (collectively, "Microsoft visual designs") for its software and related components.

43. Defendants' wrongful conduct includes the use of Microsoft's marks, name, and/or imitation visual designs, specifically displays, logos, icons, graphic designs, and/or packaging virtually indistinguishable from Microsoft visual designs, in connection with its goods and services.

44. Upon information and belief, Defendants engaged in such wrongful conduct with the willful purpose of misleading, deceiving, or confusing customers and the public as to the origin and authenticity of the goods and services offered, marketed or distributed in connection

with Microsoft's marks, name, and imitation visual designs, and of trading upon Microsoft's goodwill and business reputation. Defendants' conduct constitutes (a) false designation of origin, (b) false description, and (c) false representation that the imitation visual images originate from or are authorized by Microsoft, all in violation of § 43(a) of the Lanham Trademark Act, set forth at 15 U.S.C. § 1125(a).

45. Defendants' wrongful conduct is likely to continue unless restrained and enjoined.

46. As a result of Defendants' wrongful conduct, Microsoft has suffered and will continue to suffer damages. Microsoft is entitled to injunctive relief and to an order compelling the impounding of all imitation marks and visual designs being used, offered, advertised, marketed, installed, or distributed by Defendants. Microsoft has no adequate remedy at law for Defendants' wrongful conduct because, among other things, (a) Microsoft's marks, name and visual designs are unique and valuable property which have no readily-determinable market value, (b) Defendants' advertising, marketing, installation, or distribution of imitation visual designs constitutes harm to Microsoft such that Microsoft could not be made whole by any monetary award, and (c) Defendants' wrongful conduct, and the resulting damage to Microsoft, is continuing.

Fourth Claim

[New York Common Law Unfair Competition] Against Defendants

47. Microsoft realleges, and incorporates by this reference, each and every allegation set forth in paragraphs 1 through 46, inclusive.

48. Defendants' activities are likely to confuse the public into believing that the items being offered or distributed by Defendants are sponsored, approved or authorized by Microsoft in violation of Microsoft's rights in its trademarks, service mark and logos under the common law of unfair competition of the State of New York.

49. Defendants' activities as alleged constitute unfair competition pursuant to the common law of the State of New York.

50. Defendants' activities as alleged above have damaged and will continue to damage Microsoft and have resulted in an illicit gain of profit to Defendants in an amount that is unknown at the present time.

Fifth Claim

**[For Imposition Of A Constructive Trust Upon The
Illegal Profits Of All Defendants]
Against Defendants**

51. Microsoft realleges, and incorporates by this reference, each and every allegation set forth in paragraphs 1 through 50, inclusive.

52. Defendants' conduct constitutes deceptive, fraudulent and wrongful conduct in the nature of passing off the infringing materials as genuine Microsoft software approved or authorized by Microsoft.

53. By virtue of their wrongful conduct, Defendants have illegally received money and profits that rightfully belong to Microsoft.

54. Upon information and belief, Defendants hold the illegally received money and profits in the form of bank accounts, real property, or personal property that can be located and traced.

55. Defendants hold the money and profits they have illegally received as constructive trustees for the benefit of Microsoft.

Sixth Claim

**[Accounting]
Against Defendants**

56. Microsoft realleges, and incorporates by this reference, each and every allegation set forth in paragraphs 1 through 55, inclusive.

57. Microsoft is entitled, pursuant to 17 U.S.C. § 504 and 15 U.S.C. § 1117, to recover any and all profits of Defendants that are attributable to their acts of infringement.

58. Microsoft is entitled, pursuant to 17 U.S.C. § 504 and 15 U.S.C. § 1117, to actual damages or statutory damages sustained by virtue of Defendants' acts of infringement.

59. The amount of money due from Defendants to Microsoft is unknown to Microsoft and cannot be ascertained without a detailed accounting by Defendants of the precise number of units of infringing material offered for distribution and distributed by Defendants.

PRAYER

WHEREFORE, Microsoft respectfully requests judgment against the Defendants as follows:

- (1) That the Court enter a judgment against Defendants as indicated below:
 - (a) that Defendants have willfully infringed Microsoft's rights in the following federally registered copyright under 17 U.S.C. § 501:
 - (1) TX 5-407-055 ("Windows XP Professional");
 - (b) that Defendants have willfully infringed Microsoft's rights in the following federally registered trademarks and service mark under 15 U.S.C. § 1114:
 - (1) 1,200,236 ("MICROSOFT");
 - (2) 1,256,083 ("MICROSOFT");
 - (3) 1,872,264 ("WINDOWS"); and
 - (4) 2,744,843 (COLORED FLAG DESIGN);
 - (c) that Defendants have committed and are committing acts of false designation of origin, false or misleading description of fact, and false or misleading representation against Microsoft as defined in 15 U.S.C. § 1125(a);
 - (d) that Defendants have engaged in unfair competition in violation of the common law of the State of New York; and
 - (e) that Defendants have otherwise injured the business reputation and business of Microsoft by Defendants' acts and conduct set forth in this Complaint.
 - (2) That the Court issue injunctive relief against Defendants, and that Defendants, their directors, principals, officers, agents, representatives, servants, employees, attorneys, successors and assigns, and all others in active concert or participation with Defendants, be enjoined and restrained from:

(a) imitating, copying, or making any other infringing use or infringing distribution of software programs, components and/or items protected by Microsoft's registered trademarks and service mark, including, but not limited to, the following Trademark Registration Nos.:

- (1) 1,200,236 ("MICROSOFT");
- (2) 1,256,083 ("MICROSOFT");
- (3) 1,872,264 ("WINDOWS"); and
- (4) 2,744,843 (COLORED FLAG DESIGN);

or the software programs, components and/or items protected by the following Certificate of Copyright Registration No.:

- (1) TX 5-407-055 ("Windows XP Professional");

and any other works now or hereafter protected by any Microsoft trademark, service mark, or copyright;

(b) manufacturing, assembling, producing, distributing, offering for distribution, circulating, selling, offering for sale, advertising, importing, promoting, or displaying any software program, component, and/or item bearing any simulation, reproduction, counterfeit, copy, or colorable imitation of any of Microsoft's registered trademarks, service mark, or copyrights, including, but not limited to, the Trademark, Service Mark, and Copyright Registration Numbers listed in Section (2)(a) above;

(c) using any simulation, reproduction, counterfeit, copy, or colorable imitation of Microsoft's registered trademarks, service mark, or copyright including, but not limited to, the Trademark, Service Mark, and Copyright Registration Numbers listed in Section (2)(a) above, in connection with the manufacture, assembly, production, distribution, offering for distribution, circulation, sale, offering for sale, import, advertisement, promotion, or display of any software program, component, and/or item not authorized or licensed by Microsoft;

(d) using any false designation of origin or false description which can or is likely to lead the trade or public or individuals erroneously to believe that any program,

component, and/or item has been manufactured, assembled, produced, distributed, offered for distribution, circulation, sold, offered for sale, imported, advertised, promoted, displayed, licensed, sponsored, approved, or authorized by or for Microsoft, when such is not true in fact;

(e) engaging in any other activity constituting an infringement of any of Microsoft's trademarks, service mark and/or copyrights, or of Microsoft's rights in, or right to use or to exploit these trademarks, service mark, and/or copyrights; and

(f) assisting, aiding, or abetting any other person or business entity in engaging in or performing any of the activities referred to in subparagraphs (a) through (e) above.

(3) That the Court enter an order declaring that Defendants hold in trust, as constructive trustees for the benefit of Microsoft, their illegal profits obtained from their distribution of infringing copies of Microsoft's software, and requiring Defendants to provide Microsoft a full and complete accounting of all amounts due and owing to Microsoft as a result of Defendants' illegal activities.

(4) That the Court order Defendants to pay Microsoft's general, special, actual, and statutory damages as follows:

(a) Microsoft's damages and Defendants' profits pursuant to 17 U.S.C. § 504(b), or in the alternative, enhanced statutory damages pursuant to 17 U.S.C. § 504(c)(2), for Defendants' willful infringement of Microsoft's copyrights;

(b) Microsoft's damages and Defendants' profits pursuant to 15 U.S.C. § 1117(a), trebled pursuant to 15 U.S.C. § 1117(b) for Defendants' willful violation of Microsoft's registered trademarks and service mark, or in the alternative statutory damages pursuant to 15 U.S.C. § 1117(c) for each counterfeit mark; and

(c) Microsoft's damages and Defendants' profits pursuant to New York common law;

(5) That the Court order Defendants to pay to Microsoft both the costs of this action and the reasonable attorneys' fees incurred by it in prosecuting this action; and

(6) That the Court grant to Microsoft such other and additional relief as is just and proper.

Dated: March 28, 2006

BOND, SCHOENECK & KING, PLLC

By: 

Jonathan B. Fellows, Esq.

One Lincoln Center

Syracuse, NY 13202

Email: jfellows@bsk.com

Telephone: (315) 218-8000

Facsimile: (315) 218-8100

Attorneys for Plaintiff Microsoft Corporation

EXHIBIT 1

CERTIFICATE OF REGISTRATION



This Certificate issued under the seal of the Copyright Office in accordance with title 17, United States Code, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

Marybeth Peters
REGISTER OF COPYRIGHTS
United States of America

FORM TX
For a Nondramatic Literary Work
UNITED STATES COPYRIGHT OFFICE

TX 5-407-055



EFFECTIVE DATE OF REGISTRATION

Nov. 6, 2001
Month Day Year

DO NOT WRITE ABOVE THIS LINE. IF YOU NEED MORE SPACE, USE A SEPARATE CONTINUATION SHEET.

1

TITLE OF THIS WORK ▼
Microsoft Windows XP Professional

PREVIOUS OR ALTERNATIVE TITLES ▼

PUBLICATION AS A CONTRIBUTION If this work was published as a contribution to a periodical, serial, or collection, give information about the collective work in which the contribution appeared. Title of Collective Work ▼

If published in a periodical or serial give: Volume ▼ Number ▼ Issue Date ▼ On Pages ▼

2

NAME OF AUTHOR ▼
a Microsoft Corporation

Was this contribution to the work a "work made for hire"?
☒ Yes
☐ No

AUTHOR'S NATIONALITY OR DOMICILE
Name of Country
OR { Citizen of
Domiciled in

DATES OF BIRTH AND DEATH
Year Born ▼ Year Died ▼

WAS THIS AUTHOR'S CONTRIBUTION TO THE WORK
Anonymous? ☐ Yes ☒ No
Pseudonymous? ☐ Yes ☒ No
If the answer to either of these questions is "Yes," see detailed instructions.

NOTE

Under the law, the "author" of a "work made for hire" is generally the employer, not the employee (see instructions). For any part of this work that was "made for hire" check "Yes" in the space provided, give the employer (or other person for whom the work was prepared) as "Author" of that part, and leave the space for dates of birth and death blank.

NATURE OF AUTHORSHIP Briefly describe nature of material created by this author in which copyright is claimed, ▼
Entire work - computer software program, documentation & text on product packaging

NAME OF AUTHOR ▼

DATES OF BIRTH AND DEATH
Year Born ▼ Year Died ▼

WAS THIS AUTHOR'S CONTRIBUTION TO THE WORK
Anonymous? ☐ Yes ☐ No
Pseudonymous? ☐ Yes ☐ No
If the answer to either of these questions is "Yes," see detailed instructions.

Was this contribution to the work a "work made for hire"?
☐ Yes
☐ No

AUTHOR'S NATIONALITY OR DOMICILE
Name of Country
OR { Citizen of
Domiciled in

NATURE OF AUTHORSHIP Briefly describe nature of material created by this author in which copyright is claimed, ▼

NAME OF AUTHOR ▼

DATES OF BIRTH AND DEATH
Year Born ▼ Year Died ▼

WAS THIS AUTHOR'S CONTRIBUTION TO THE WORK
Anonymous? ☐ Yes ☐ No
Pseudonymous? ☐ Yes ☐ No
If the answer to either of these questions is "Yes," see detailed instructions.

Was this contribution to the work a "work made for hire"?
☐ Yes
☐ No

AUTHOR'S NATIONALITY OR DOMICILE
Name of Country
OR { Citizen of
Domiciled in

NATURE OF AUTHORSHIP Briefly describe nature of material created by this author in which copyright is claimed, ▼

3

YEAR IN WHICH CREATION OF THIS WORK WAS COMPLETED
a 2001

This information must be given in all cases.

DATE AND NATION OF FIRST PUBLICATION OF THIS PARTICULAR WORK
b Complete this information ONLY if this work has been published. Month 10 Day 25 Year 2001

U.S.A.

4

See instructions before completing this space.

COPYRIGHT CLAIMANT(S) Name and address must be given even if the claimant is the same as the author given in space 2. ▼ Microsoft Corporation

Law and Corporate Affairs
One Microsoft Way
Redmond, WA 98052

TRANSFER If the claimant(s) named here in space 4 is (are) different from the author(s) named in space 2, give a brief statement of how the claimant(s) obtained ownership of the copyright. ▼

APPLICATION RECEIVED

NOV 06 2001

ONE DEPOSIT RECEIVED

TWO DEPOSITS RECEIVED

NOV 06 2001

FUNDS RECEIVED

MORE ON BACK ▶

• Complete all applicable spaces (numbers 1-5) on the reverse side of this page.
• See detailed instructions. • Sign the form at line 5.

DO NOT WRITE HERE

Page 1 of 2 pages

EXAMINED BY

T.M.S.

FORM TX

CHECKED BY

CORRESPONDENCE

☐ YesFOR
COPYRIGHT
OFFICE
USE
ONLY

DO NOT WRITE ABOVE THIS LINE. IF YOU NEED MORE SPACE, USE A SEPARATE CONTINUATION SHEET.

PREVIOUS REGISTRATION Has registration for this work, or for an earlier version of this work, already been made in the Copyright Office?

5

☒ Yes ☐ No If your answer is "Yes," why is another registration being sought? (Check appropriate box.)

a. ☐ This is the first published edition of a work previously registered in unpublished form.

b. ☐ This is the first application submitted by this author as copyright claimant.

c. ☒ This is a changed version of the work, as shown by space 6 on this application.

If your answer is "Yes," give Previous Registration Number

Year of Registration
2000

TX 5-038-267

DERIVATIVE WORK OR COMPILATION

Preexisting Material Identify any preexisting work or works that this work is based on or incorporates.

a. Previous version & files copyrighted by various third parties

b. Material Added to This Work Give a brief, general statement of the material that has been added to this work and in which copyright is claimed.

Additional programming text, additional written text, and editorial revisions

See instructions
before completing
this space.

6

DEPOSIT ACCOUNT If the registration fee is to be charged to a Deposit Account established in the Copyright Office, give name and number of Account.

Name

a. Microsoft Corporation

Account Number
DAO63819

CORRESPONDENCE Give name and address to which correspondence about this application should be sent. Name/Address/Apt./City/State/ZIP

b. Microsoft Corporation, ATTN: Judy Weston
One Microsoft Way
Redmond, WA 98052

Area code and daytime telephone number (425) 936-9104

Fax number (425) 936-7329

E-mail judywe@microsoft.com

CERTIFICATION* I, the undersigned, hereby certify that I am the

Check only one

☐ author☐ other copyright claimant☐ owner of exclusive right(s)☒ authorized agent of Microsoft Corporation

Name of author or other copyright claimant, or owner of exclusive right(s)

of the work identified in this application and that the statements made by me in this application are correct to the best of my knowledge.

Typed or printed name and date If this application gives a date of publication in space 3, do not sign and submit it before that date.

Judy K.K. Weston

Date November 5, 2001

Handwritten signature (s)

The filing fee of \$20.00 is effective through June 30, 1999. After that date, please write the Copyright Office, check the Copyright Office Website at <http://www.loc.gov/copyright>, or call (202) 707-3000 for the latest fee information.

Mail
certificate
to:

Certificate
will be
mailed in
window
envelope

Name

Microsoft Corporation, ATTN: Judy Weston
Law and Corporate Affairs

Number/Street/Apt.

One Microsoft Way

City/State/ZIP

Redmond, WA 98052

YOU MUST

1. Complete all necessary forms

2. Sign your application in space 6

3. Send all payments in the same package

1. Application form

2. Nonrefundable filing fee in check or money order

3. Deposit material

MAIL TO

Library of Congress

Copyright Office

101 Independence Avenue, S.E.

Washington, D.C. 20540-6000

17 U.S.C. § 506(e): Any person who knowingly makes a false representation of a material fact in the application for copyright registration provided for by section 408, or in any written statement filed in connection with the application, shall be fined not more than \$2,500.

December 1998—55,000

PRINTED ON RECYCLED PAPER

U.S. GOVERNMENT PRINTING OFFICE: 1999-484-870/00,050

9

EXHIBIT 2

718964

THE UNITED STATES OF AMERICA

TO ALL TO WHOM THESE PRESENTS SHALL COME:

UNITED STATES DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

March 11, 2004

**THE ATTACHED U.S. TRADEMARK REGISTRATION 1,200,236 IS
CERTIFIED TO BE A TRUE COPY WHICH IS IN FULL FORCE AND
EFFECT WITH NOTATIONS OF ALL STATUTORY ACTIONS TAKEN
THEREON AS DISCLOSED BY THE RECORDS OF THE UNITED STATES
PATENT AND TRADEMARK OFFICE.**

**REGISTERED FOR A TERM OF 20 YEARS FROM *July 06, 1982*
1st RENEWAL FOR A TERM OF 10 YEARS FROM *July 06, 2002*
SECTION 8 & 15**

**AMENDMENT/CORRECTION/NEW CERT(SEC7) ISSUED
SAID RECORDS SHOW TITLE TO BE IN:**

***MICROSOFT CORPORATION
A WASHINGTON CORP***

**By Authority of the
COMMISSIONER OF PATENTS AND TRADEMARKS**



M. K. Hawkins
M. K. HAWKINS

Certifying Officer

Int. Cls.: 9 and 42

Prior U.S. Cls.: 26, 38 and 101

United States Patent and Trademark Office

Reg. No. 1,200,236

Registered Jul. 6, 1982

**TRADEMARK
SERVICE MARK**
Principal Register

MICROSOFT.

Microsoft (partnership)
Suite 819
10800 NE. 8th
Bellevue, Wash. 98004

VICES, in CLASS 42 (U.S. Cl. 101).

First use Nov. 12, 1975; in commerce Nov. 12, 1975.

For: COMPUTER PROGRAMS, in CLASS 9
(U.S. Cls. 26 and 38).

First use Nov. 12, 1975; in commerce Nov. 12, 1975.

For: COMPUTER PROGRAMMING SER-

Ser. No. 236,080, filed Oct. 22, 1979.

B. H. VERTIZ, Primary Examiner

CHERYL LYNNE HENDERSON, Examiner

Certificate of Correction

Registered July 6, 1982

Registration No. 1,200,236

Microsoft Corporation, by change of name and assignment from Microsoft

It is hereby certified that the above identified registration is in error requiring correction as follows:

In the statement, column 1, before line 1, *Microsoft Corporation (Washington corporation), 10700 Northup Way, Bellevue, Wash. 98004, by change of name and assignment from* should be inserted.

The said registration should be read as corrected above.

Signed and sealed this 3rd day of April 1984.

[SEAL]

Attest:

MICHAEL J. HYNAR,
Attesting Officer.

GERALD J. MOSSINGHOFF,
Commissioner of Patents and Trademarks.

EXHIBIT 3

718964



THE UNITED STATES OF AMERICA

TO ALL TO WHOM THESE PRESENTS SHALL COME:

UNITED STATES DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

March 11, 2004

THE ATTACHED U.S. TRADEMARK REGISTRATION 1,256,083 IS
CERTIFIED TO BE A TRUE COPY WHICH IS IN FULL FORCE AND
EFFECT WITH NOTATIONS OF ALL STATUTORY ACTIONS TAKEN
THEREON AS DISCLOSED BY THE RECORDS OF THE UNITED STATES
PATENT AND TRADEMARK OFFICE.

REGISTERED FOR A TERM OF 20 YEARS FROM *November 01, 1983*
SECTION 8 & 15

SAID RECORDS SHOW TITLE TO BE IN:

MICROSOFT CORPORATION

A WA CORP

By Authority of the
COMMISSIONER OF PATENTS AND TRADEMARKS



E. Bornett
E. BORNETT
Certifying Officer

Int. Cl.: 16

Prior U.S. Cl.: 38

United States Patent and Trademark Office

Reg. No. 1,256,083

Registered Nov. 1, 1983

TRADEMARK
Principal Register

MICROSOFT

Microsoft Corporation (Washington corporation).
10700 Northup Way
Bellevue, Wash. 98004

For: COMPUTER HARDWARE AND SOFTWARE MANUALS; NEWSLETTER FEATURING INFORMATION ABOUT COMPUTER HARDWARE AND SOFTWARE AND GENERAL INFORMATION RELATING TO COMPUTERS FOR MANUFACTURERS, DISTRIBUTORS, AND USERS OF COMPUTERS AND COMPUTER SOFTWARE; AND COMPUTER DOCUMENTATION—NAMELY, REFERENCE, USER, INSTRUCTIONAL, AND GENERAL UTILITIES MANUALS AND DATA SHEETS FOR COMPUTER HARDWARE AND SOFTWARE USERS, in CLASS 16 (U.S. Cl. 38).

First use Nov. 1975; in commerce Nov. 1975.

Ser. No. 373,992, filed Jul. 12, 1982.

J. H. WEBB, Examining Attorney

EXHIBIT 4

718964

THE UNITED STATES OF AMERICA

TO ALL TO WHOM THESE PRESENTS SHALL COME:

UNITED STATES DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

March 11, 2004

**THE ATTACHED U.S. TRADEMARK REGISTRATION 1,872,264 IS
CERTIFIED TO BE A TRUE COPY WHICH IS IN FULL FORCE AND
EFFECT WITH NOTATIONS OF ALL STATUTORY ACTIONS TAKEN
THEREON AS DISCLOSED BY THE RECORDS OF THE UNITED STATES
PATENT AND TRADEMARK OFFICE.**

REGISTERED FOR A TERM OF 10 YEARS FROM *January 10, 1995*

SECTION 8

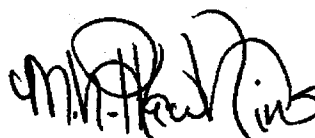
SAID RECORDS SHOW TITLE TO BE IN:

MICROSOFT CORPORATION

A WASHINGTON CORP



**By Authority of the
COMMISSIONER OF PATENTS AND TRADEMARKS**


M. K. HAWKINS
Certifying Officer

Int. Cl.: 9

Prior U.S. Cl.: 38

United States Patent and Trademark Office **Reg. No. 1,872,264**
Registered Jan. 10, 1995

**TRADEMARK
PRINCIPAL REGISTER**

WINDOWS

MICROSOFT CORPORATION (DELAWARE
CORPORATION)
ONE MICROSOFT WAY
REDMOND, WA 980526399

FOR: COMPUTER PROGRAMS AND MANU-
ALS SOLD AS A UNIT; NAMELY, GRAPHICAL
OPERATING ENVIRONMENT PROGRAMS
FOR MICROCOMPUTERS, IN CLASS 9 (U.S.
CL. 38).

FIRST USE 10-18-1983; IN COMMERCE
10-18-1983.

SEC. 2(F).

SER. NO. 74-090,419, FILED 8-20-1990.

ESTHER BELENKER, EXAMINING ATTOR-
NEY

EXHIBIT 5

Int. Cl.: 9

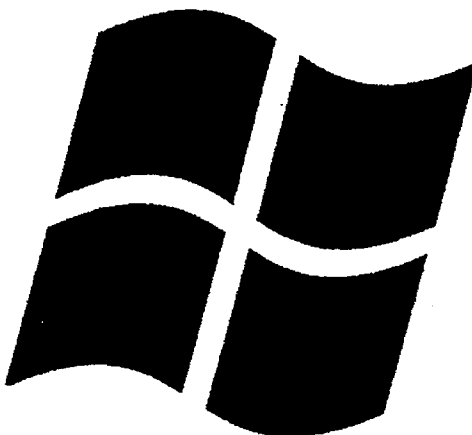
Prior U.S. Cls.: 21, 23, 26, 36, and 38

Reg. No. 2,744,843

United States Patent and Trademark Office

Registered July 29, 2003

**TRADEMARK
PRINCIPAL REGISTER**



MICROSOFT CORPORATION (WASHINGTON CORPORATION)
ONE MICROSOFT WAY
REDMOND, WA 980526399

FOR: COMPUTER SOFTWARE, NAMELY, OPERATING SYSTEM PROGRAMS AND UTILITIES, WORD PROCESSING PROGRAMS, ADDRESS BOOK PROGRAMS, CALCULATOR PROGRAMS, TERMINAL EMULATION PROGRAMS, PROGRAMS FOR DOWNLOADING AND PLAYING AUDIO AND VIDEO, PROGRAMS FOR MANAGING COMPUTER POWER SUPPLIES, PROGRAMS FOR USE IN TRANSMITTING DATA BETWEEN COMPUTERS AND OTHER ELECTRONIC DEVICES, COMPUTER MAINTENANCE PROGRAMS, PROGRAMS FOR PROVIDING ENHANCED SPECIAL EFFECTS WHILE RUNNING GAME PROGRAMS, PROGRAMS FOR USE IN ACCESSING AND PLAYING CDS AND DVDS, BROWSER PROGRAMS, ACCESSIBILITY PROGRAMS TO MAKE COMPUTERS MORE USEFUL FOR PERSONS WITH DISABILITIES; PAINT PROGRAMS, NAMELY, COMPUTER SOFTWARE FOR USE IN CREATING, EDITING AND COLORING DRAWINGS; ELECTRONIC MAIL PROGRAMS; PROGRAMS FOR ELECTRONIC CONFERENCING; COMPUTER SOFTWARE FOR PLAYING VIDEO AND ELECTRONIC GAMES AND COMPUTER GAMES; USER MANUALS THEREFOR SOLD AS A UNIT THEREWITH; COMPUTERS; COMPUTER HARDWARE; AND FULL LINE OF COMPUTER APPLICATION PROGRAMS; COMPUTER PERIPHERALS; COMPU-

TER MICE AND POINTING DEVICES; HAND HELD COMPUTERS; DVD PLAYERS; DIGITAL CELLULAR PHONES; BLANK SMART CARDS, NAMELY, ENCODED ELECTRONIC CHIP CARDS CONTAINING PROGRAMMING FOR VARIOUS BUSINESS AND TECHNICAL FUNCTIONS; COMMUNICATION SERVERS, AND COMPUTER APPLICATION PROGRAMS AND OPERATING SYSTEM PROGRAMS FOR USE THEREWITH; COMPUTER PROGRAMS FOR MANAGING COMMUNICATIONS AND DATA EXCHANGE BETWEEN COMPUTERS AND ELECTRONIC DEVICES; VIDEO GAME MACHINES FOR USE WITH TELEVISIONS AND COMPUTERS, AND OPERATING SYSTEM SOFTWARE FOR USE THEREWITH; OPERATING SYSTEM SOFTWARE FOR USE IN PLAYING ELECTRONIC GAMES; COMPUTER HARDWARE AND PERIPHERALS; COMPUTER KEYBOARDS; COMPUTER AND VIDEO GAME JOYSTICKS; VIDEO GAME INTERACTIVE CONTROL FLOOR PADS, IN CLASS 9 (U.S. CLS. 21, 23, 26, 36 AND 38).

FIRST USE 3-26-2001; IN COMMERCE 3-26-2001.

OWNER OF U.S. REG. NOS. 1,815,350, 1,816,354, AND OTHERS.

THE MARK CONSISTS OF A FLAG DESIGN. THE UPPER LEFT PORTION OF THE FLAG IS RED, THE LOWER LEFT PORTION IS BLUE, THE UPPER RIGHT PORTION IS GREEN, AND THE LOWER RIGHT PORTION IS YELLOW. COLOR IS CLAIMED AS PART OF THE MARK.